

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

3 * * *

4 RODERICK WISE, an individual,
5 Plaintiff,

6 v.

7 SOUTHERN TIER EXPRESS, INC., a New
8 York corporation; DOES I through X; and
9 ROE CORPORATIONS I through X,
inclusive,

10 Defendants.

Case No. 2:15-cv-01219-APG-PAL

**ORDER DENYING MOTION IN
LIMINE NO. 14 (WHEN PLAINTIFF
RETAINED COUNSEL)**

(ECF No. 88)

11 Plaintiff Roderick Wise moves to exclude testimony as to when he retained counsel. ECF
12 No. 88. He argues that this information is irrelevant to the issues to be tried, and is protected by
13 the attorney-client privilege. Defendant Southern Tier disagrees. ECF No. 106.

14 The “party asserting the attorney-client privilege has the burden of establishing the
15 [existence of an attorney-client] relationship and the privileged nature of the communication.”
16 *United States v. Ruehle*, 583 F.3d 600, 607 (9th Cir. 2009) (quotation and emphasis omitted).
17 “Because it impedes full and free discovery of the truth, the attorney-client privilege is strictly
18 construed.” *Id.* (quotation omitted). Courts typically employ an eight-part test to determine
19 whether the attorney-client privilege applies:

20 (1) Where legal advice of any kind is sought (2) from a professional legal adviser
21 in his capacity as such, (3) the communications relating to that purpose, (4) made
22 in confidence (5) by the client, (6) are at his instance permanently protected (7)
from disclosure by himself or by the legal adviser, (8) unless the protection be
waived.

23 *Id.* (quotation omitted).

24 Wise has not met his burden of showing that the date he retained counsel is protected by
25 the attorney-client privilege. Wise contends that the date he hired his attorney necessarily reveals
26 his communication to the lawyer that he wanted to hire him. But he cites no authority in support
27 of this proposition. The fact that he hired an attorney to represent him in relation to the accident
28

1 has been publicly divulged through this litigation. Identifying the date Wise contacted or hired
2 his attorney discloses an act, not the substance of a confidential communication. Consequently,
3 the dates when Wise contacted and hired his attorney are not privileged.

4 As to relevance, I agree with other judges in this District that have concluded the weight
5 to be given this evidence is for the jury to resolve. *Roberts v. Smith's Food & Drug Ctrs., Inc.*,
6 No. 2:11-cv-01917-JCM-GWF, 2014 U.S. Dist. LEXIS 72609, at *11-12 (D. Nev. May 28,
7 2014); *Badger v. Wal-Mart Stores, Inc.*, No. 2:11-cv-01609-KJD-CWH, 2013 U.S. Dist. LEXIS
8 91216, at *22-23 (D. Nev. June 28, 2013).

9 Therefore, Wise's motion in limine (**ECF No. 88**) is **DENIED**.

10 DATED this 10th day of July, 2017.

11 
12 _____
13 ANDREW P. GORDON
14 UNITED STATES DISTRICT JUDGE
15
16
17
18
19
20
21
22
23
24
25
26
27
28